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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 CHRISTIAN BERRELLEZA-VERDUZCO,

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA,

13 Defendant.  
14

Case No. C16-1308RSL

ORDER DENYING  
REQUEST FOR LEAVE TO  
FILE OUT-OF-TIME  
NOTICE OF APPEAL

15 This matter comes before the Court on “Petitioner’s Pro Se Rule 60(b)(6) for Leave to  
16 Reinstate Timely Notice of Appeal and COA as Submitted.” Dkt. # 19. The Court denied  
17 petitioner’s motion under 28 U.S.C. § 2255 on November 22, 2016. Dkt. # 10. On December 12,  
18 2016, petitioner filed a motion for reconsideration, Dkt. # 12, which the Court denied January  
19 19, 2017, Dkt. # 15. On February 13, 2017, petitioner filed a “Motion for Leave to Alter or  
20 Amend Judgment to Include ‘COA’ and Evidentiary Hearing Denial for Appeal Purpose,” Dkt.  
21 # 16, which requested a certificate of appealability (COA) on a number of issues. On March 14,  
22 2017, the Court denied that motion based on a finding that petitioner had not satisfied the  
23 standard set forth in 28 U.S.C. § 2253(c)(2). Dkt. # 18. Nearly seventeen months passed, and  
24 then on August 6, 2018, petitioner filed the instant motion seeking leave to file an out-of-time  
25 notice of appeal. Dkt. # 19.

26 The time for filing a notice of appeal has long since expired, see Fed. R. App. P. 4, and  
27 the Ninth Circuit has made clear that a district court cannot extend the time to file a notice of  
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1 appeal beyond what the rules allow, see United States v. Pearce, 992 F.2d 1021, 1022 (9th Cir.  
2 1993). Petitioner, however, styles his request somewhat differently. He claims that his motion  
3 for a COA, Dkt. # 16, incorporated an appeal notice and should have been forwarded to the  
4 Ninth Circuit as a timely appeal.

5 The Court is not convinced that petitioner's requested relief is within the Court's  
6 authority to grant, but even if it is, the Court cannot see how petitioner's motion could be  
7 construed as a notice of appeal, even under the liberal construction rules afforded *pro se* civil  
8 rights plaintiffs. See Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). "[A] notice of appeal  
9 must specifically indicate the litigant's intent to seek appellate review . . . [in order] to ensure  
10 that the filing provides sufficient notice to other parties and the courts." Smith v. Barry, 502  
11 U.S. 244, 248 (1992). The motion appears to contemplate a future appeal—for example, it  
12 includes the phrase "in the event of a civil appeal," Dkt. # 16 at 1—but that would suggest to a  
13 reasonable reader that the filing was not itself intended to be a notice of appeal.<sup>1</sup> The Court  
14 declines to grant petitioner the relief he seeks. Petitioner can, of course, appeal this order to the  
15 Ninth Circuit. If he does, the Court encourages him to carefully read Federal Appellate Rules 3  
16 and 4 before doing so.

17 For the foregoing reasons, the motion, Dkt. # 19, is DENIED.

18 DATED this 4th day of September, 2018.  
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22 Robert S. Lasnik  
23 United States District Judge  
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26 <sup>1</sup> Although "the litigant's motivation in filing [a document does not] . . . determine[] the  
27 document's sufficiency as a notice of appeal," Smith, 502 U.S. at 248, the Court notes that petitioner has  
28 taken no other action since the Court's denial of his COA request. If he considered it a notice of appeal,  
one would expect some kind of activity in the intervening seventeen months.